



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/429,939	10/29/1999	MICHEL AUTHIER		6547

7590

07/06/2006

JOHN R ROSS III
ROSS PATENT LAW OFFICE
P O BOX 2138
DEL MAR, CA 92014

EXAMINER

FETSUGA, ROBERT M

ART UNIT	PAPER NUMBER
----------	--------------

3751

DATE MAILED: 07/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/429,939

Applicant(s)

AUTHIER ET AL.

Examiner

Robert M. Fetsuga

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26,28-32,34-37 and 39-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26, 28-32, 34-37 and 39-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

Art Unit: 3751

1. Claim 41 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim is redundant to claim 26.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 26, 28, 29, 32, 34, 35 and 39-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Janosko et al., Loyd and Lively.

The Janosko et al. (Janosko) reference discloses a spa control system comprising: a tub 11 including water (Fig. 3); piping (Fig. 10); a heater 96; a water pump 111; a controller

Art Unit: 3751

196; and a tub water temperature sensor (inherent with thermostats 199,201). The controller 196 is underneath the tub (Fig. 9). Therefore, Janosko teaches all claimed elements except for the provision of a skirt, the provision of a blower, the provision of an air temperature sensor, and the controller being a computer.

Although the tub of the Janosko spa does not include a skirt, as claimed, attention is directed to the Loyd reference which discloses an analogous spa which further includes a tub 11 having a skirt (col. 1 lns. 23-24). Therefore, in consideration of Loyd, it would have been obvious to one of ordinary skill in the spa art to associate a skirt with the Janosko tub in order to conceal the spa equipment. Provided with such a skirt, the Janosko controller would be "underneath" the skirt in the same sense as with applicant's disclosed invention. Additionally, Loyd teaches it is common to associate a blower with a spa (col. 1 lns. 19-23). Therefore, in further consideration of Loyd, it would have been obvious to one of ordinary skill in the spa art to associate a blower with the Janosko tub in order to enhance use.

Although the controller of the Janosko spa does not include an air temperature sensor, as claimed, attention is directed to the Lively reference which discloses an analogous spa which

Art Unit: 3751

further includes a controller (Fig. 3) having an air temperature sensor 110,111. Therefore, in consideration of Lively, it would have been obvious to one of ordinary skill in the spa art to associate an air temperature sensor with the Janosko controller in order to protect against a damaging air temperature. Furthermore, the obvious location for the air temperature sensor would be at the controller, analogous to the location of the thermostats 199,201 taught by Janosko.

Although the controller of the Janosko spa does not include a computer, as claimed, attention is again directed to the Lively reference which discloses that the controller can be a computer (col. 8 lns. 32-41). Therefore, in further consideration of Lively, it would have been obvious to one of ordinary skill in the spa art to associate a computer with the Janosko controller in order to enable programming. Moreover, the Lively computer is considered to meet the "programmed" limitation set forth in claim 26, for example. Note again lines 39-41 in column 8 of Lively.

Applicant's arguments with respect to the claims at pages 11-12 of the response filed May 30, 2006 have been considered but are moot in view of the new ground(s) of rejection.

Art Unit: 3751

4. Claims 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Janosko, Loyd and Lively as applied to claim 26 above, and further in view of Tompkins et al. '720.

Although the controller of the Janosko freeze control system does not include time intervals, as claimed, attention directed to the Tompkins al. '720 ('720) reference which discloses an analogous freeze control system which further includes a controller 12,14 having time intervals (col. 8 lns. 25-32). Therefore, in consideration of '720, it would have been obvious to one of ordinary skill the freeze control system art to associate time intervals with the Janosko controller in order to allow effective user control. Re claim 31, the choice of interval length would appear an obvious choice to be made.

Applicant has not substantively argued this ground of rejection beyond noting claim dependency.

5. Claims 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Janosko, Loyd and Lively as applied to claim 32 above, and further in view of Dundas.

Dundas teaches it is common to operate a blower 19 during freezing conditions (col. 4 lns. 22-25). To automate the blower operation taught by Dundas with the controller taught by Janosko would have been obvious in order to enhance freeze protection.

Applicant did not substantively address this ground of rejection in the response.

6. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

7. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3751

8. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.

A handwritten signature in black ink, appearing to read "Robert M. Fetsuga", is positioned above the printed name and title.

Robert M. Fetsuga
Primary Examiner
Art Unit 3751